Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Misuse of Internet Protocol (IP) Captioned Telephone Service	)	CG Docket No. 13-24
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123

REPLY COMMENTS OF CAPTIONCALL, LLC

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CaptionCall, LLC hereby submits these reply comments on the Federal Communications Commission's ("Commission") *Further Notice of Proposed Rulemaking* ("*Further Notice*") in the above-captioned dockets.

INTRODUCTION AND EXECUTIVE SUMMARY

In its comments, CaptionCall outlined targeted reforms that the Commission could adopt to achieve its goals of ensuring that people with hearing loss can communicate effectively by telephone, keeping waste and fraud out of the TRS program, ensuring that providers deliver high-quality service, and creating a rate structure that will continue to encourage innovation and efficiency.[1] As described below, a broad array of commenters support this approach to modernizing the IP CTS program.[2]

[1] *See generally* Comments of CaptionCall, LLC, CG Docket Nos. 13-24, 03-123 (Sept. 17, 2018) ("*CaptionCall Comments*").

[2] *See In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, CG Docket Nos. 13-24, 03-123, FCC 18-79 ¶ 1 (rel. June 8, 2018) ("*Further Notice*").

First, the Commission must start from the correct baseline understanding of the cause of IP CTS growth. A significant number of commenters point out that the *Further Notice*'s presumption that the growth in demand for IP CTS in recent years must be evidence of waste, fraud, or abuse has no foundation in reality or in the record. Indeed, there is substantial evidence in the record that the growth is organic, as the number of eligible users has increased for demographic reasons that were predictable (and predicted)[3] when the Commission first authorized IP CTS, and because more Americans with hearing loss have become aware of treatment options generally and IP CTS specifically. The fact that eligible individuals are getting the services they need is something to be celebrated; it is not a basis for violating the Americans with Disabilities Act ("ADA") by adopting new hurdles or unnecessary barriers that would make it difficult or impossible for these individuals to obtain access to IP CTS.

Second, while CaptionCall agrees with the Consumer Groups that individuals with hearing loss are best positioned to understand their need for captions, if the Commission believes that it is necessary to have further validation, there is also broad support for the Commission's adoption of a third-party certification framework for user-eligibility determinations. This framework would be more than sufficient to ensure that third-party hearing health professionals ("HHPs") continue to guard against the introduction of waste, fraud, or abuse into the IP CTS program. The Commission also recently adopted new rules targeting perceived waste, fraud, and abuse in the program, and it is premature to adopt burdensome *additional* rules until it has had a chance to evaluate whether any further changes are necessary.

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[3] *See* Petition for Rulemaking to Mandate Captioned Telephone Relay Service and Approve IP Captioned Telephone Relay Service, CG Docket No. 03-123, at 9 (Oct. 31, 2005) (noting that "there are approximately 31 million Americans with mild-to-profound hearing loss" and that number was "expected to jump to 40 million in less than a generation").

Third, commenters agree that the devolution of administration of the IP CTS program to the states would, at the very least, raise significant federal and state legal concerns, as well as potentially reduce consumer choice and create additional pressure on the TRS Fund. CaptionCall supports partnering with states to ensure that individuals with hearing loss have the services and equipment they need to communicate effectively by phone, but the record does not support mandatory devolution of any aspect of IP CTS administration to the states.

Finally, commenters support a methodology to set IP CTS rates that replicates market-based incentives, and they underscore the harms associated with a submitted-cost-based rate-setting methodology, including unnecessary and wasteful administrative costs. The record also supports adopting a rate-setting methodology that treats all IP CTS providers the same. For instance, commenters agree that the Commission should treat all providers' intellectual property costs alike. And other proposals that involve non-uniform treatment of providers, including tiered IP CTS rates and the Fund Administrator's proposed $0.49 rate for service using exclusively automated speech recognition ("ASR") technology, lack support on the record and would result in inappropriate incentives and inefficiencies.

Adopting reforms consistent with these four points will generate substantial benefits for individuals with hearing loss, improve the efficiency and sustainability of the IP CTS program, and avoid the uncertainty and other harms that would result from the Commission's proposals in the *Further Notice*.

I. The Record Confirms That Growth in Demand for IP CTS Is Due to a Growing Population of Eligible Users—Not Waste, Fraud, or Abuse.

A wide range of commenters explain that the Commission's assumption that IP CTS demand growth is attributable to waste, fraud, or abuse is flawed and unsubstantiated.

First, many commenters agree that the increasing demand for IP CTS reflects the fact that a large number of individuals are aging into hearing loss and appropriately getting the services they need to communicate effectively by telephone.[4] For instance, the Consumer Groups explain that "the increased use [of IP CTS] is the result of an aging population that is becoming more generally aware of accessibility technologies like IP CTS," noting that "[n]early 25 percent of Americans aged 65 to 74 and a full 50 percent of Americans aged 75 and older experience disabling hearing loss"; "[a]ccordingly, the increase in demand for IP CTS minutes likely is based on increased awareness of the program as well as legitimate need and growth in the hard of hearing [and] deaf . . . communities."[5] The American Speech-Language-Hearing Association ("ASHA") likewise states that "[a]lthough significant increases in [IP CTS] utilization have occurred, . . . this growth is due in part to the increased incidence and prevalence of hearing loss and impairments, as well as the effects of fair and valid dissemination of information to individuals with a need for IP CTS."[6] The International Hearing Society ("IHS") agrees: "[T]he increased use of IP CTS . . . does not necessarily mean there is widespread abuse within the system as suggested in the [*Further Notice*]; rather it is [IHS] members' observations that more people in need are learning about and utilizing this life-changing service."[7] Sprint and Hamilton similarly point to evidence that

[4] *See* Comments of Hearing Loss Association of America (HLAA) et al., CG Docket Nos. 13-24, 03-123, at iv (Sept. 17, 2018) ("*Consumer Groups Comments*"); Comments of American Speech-Language-Hearing Association, CG Docket Nos. 13-24, 03-123, at 2 (Sept. 14, 2018) ("*ASHA Comments*"); Comments of International Hearing Society, CG Docket Nos. 13-24, 03-123, at 1 (Sept. 17, 2018) ("*IHS Comments*"); Comments of Hamilton Relay, Inc., CG Docket Nos. 13-24, 03-123, at 16-17 (Sept. 17, 2018) ("*Hamilton Comments*"); Comments of Sprint Corp., CG Docket Nos. 13-24, 03-123, at 5-6 (Sept. 17, 2018) ("*Sprint Comments*"); *accord CaptionCall Comments* Part III.A.

[5] *Consumer Groups Comments* at iv.

[6] *ASHA Comments* at 2.

[7] *IHS Comments* at 1.

demographic trends are driving the increased demand for IP CTS.[8] Critically, no commenter disputes this demographic explanation for demand growth.

Second, commenters also agree that, like in 2013, the Commission in the *Further Notice* failed to cite any "evidence" from the five-plus year record "suggesting there is fraud to deter."[9] The Consumer Groups, for instance, note that the Commission "cite[d] little evidence to link" current provider practices with respect to user eligibility "to an increase in unnecessary use of IP CTS."[10] Sprint additionally explains that "[t]he fact that . . . marketing has proven effective . . . does not" prove or even imply that any users do not actually need the service.[11] Relatedly, the Commission's recent Office of Inspector General's audit report found zero dollars of improper payments to IP CTS providers from the TRS Fund.[12] Moreover, the refreshed record does not

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[8] *See Hamilton Comments* at 16-17 ("Hamilton has previously submitted independent data into the record showing that IP CTS growth is being caused by recognizable demographic shifts related to an aging population. Notably, the over-65 population increased by 17.5% between 2008 and 2016. These figures show that the growth in IP CTS is much more likely due to the increasing pool of legitimate users and not to misuse of the service." (footnote omitted)); *Sprint Comments* at 5-6 (explaining that "because hard-of-hearing individuals substantially outnumber deaf individuals, it is completely predictable that the demand for IP CTS exceeds the demand for other forms of TRS that are designed to serve the deaf community" and further predicting that "legitimate demand for IP CTS similarly will continue to grow over time, and users will increasingly be elderly individuals who are unfamiliar with accessibility technologies").

[9] *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 707-08 (D.C. Cir. 2014).

[10] *Consumer Groups Comments* at 11; *see also Hamilton Comments* at 16. Hamilton even encourages the Commission "to initiate a new IP CTS docket with a docket name that better reflects the Commission's statutory mandate to accommodate individuals with hearing and speech disabilities, and that removes any reference to misuse." *Hamilton Comments* at 16 n.44.

[11] *Sprint Comments* at 7.

[12] *See* Federal Communications Commission & Office of Inspector General, Audit of the Federal Communications Commission Improper Payments Elimination and Recovery Improvement Act FY 2017 (Report No. 18-AUD-01-02), at 4 (2018), https://transition fcc.gov/oig/18-AUD-01-02_IPERIA_FY17_TM_Final_Audit_Report_05152018.pdf. Agencies are required to investigate and report on improper payments in accordance with the Office of Management and Budget Memorandum M-18-20, Appendix C to OMB Circular No. A-123 (2014), https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-20.pdf, which implements requirements from the Improper Payment Information Act of 2002, as amended, the Improper Payments Elimination and Recovery Act of 2010, and the Improper Payments Elimination and Recovery Improvement Act of 2012. As Hamilton notes, IP CTS providers also are audited annually and submit detailed CDRs in connection with receiving reimbursement from the TRS Fund—and yet the Commission still lacks specific evidence of wasteful or fraudulent usage of IP CTS. *Hamilton Comments* at 18; *accord CaptionCall Comments* at 29.

reveal any concrete or specific evidence of abuse, let alone evidence of any widespread or systemic abuse that would justify burdensome rules that may limit access to IP CTS. Like the Commission, a handful of commenters equate increased demand to nefarious activities, but they do not provide any evidence that would support this assumption.[13] Absent more, these commenters ignore the demographic trends that led to increasing demand for IP CTS and the related trend that more individuals with hearing loss are seeking treatment and are aware of IP CTS; like the *Further Notice*, these commenters assert a link between demand and fraud which they do not substantiate.[14] And without concrete evidence, it would be arbitrary and capricious for the Commission to adopt rules "to defeat a bogeyman whose existence was never verified, *i.e.*, the fraudulent use of IP CTS technology."[15]

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[13] *See* Comments of National Association for State Relay Administration, CG Docket Nos. 13-24, 03-123, at 2 (Sept. 14, 2018) (stating that "the uncontrolled growth that has occurred from waste and abuse of the service is a serious issue" without offering evidence or explanation linking demand growth to waste or abuse); Comments of Florida Deaf Service Center Association, CG Docket Nos. 13-24, 03-123, at 1 (Sept. 12, 2018) ("*Florida Deaf Service Center Association Comments*") (agreeing with the Commission's efforts to "control and measure the rapid growth of IP CTS minutes" and "[i]n general . . . agree[ing] in principle that there has been misuse of . . . IP CTS" without citing evidence or examples supporting belief); Comments of Missouri Assistive Technology Regarding the IP CTS Portion of the TRS Program, CG Docket Nos. 13-24, 03-123, at 8 (Sept. 17, 2018) ("*MoAT Comments*") (describing that "the historical data" suggest "that there appears to be little happening" by third-party professionals "in the way of curbing waste, fraud and abuse"); Comments of Public Service Commission of Utah, CG Docket Nos. 13-24, 03-123, at 1 (Sept. 17, 2018) (describing that "the high growth that has occurred from possible waste and abuse of the service is a serious issue" (footnote omitted)); *see also* Initial Comments of the National Association of Regulatory Utility Commissioners, CG Docket Nos. 13-24, 03-123, at 7, 18-19 (Sept. 17, 2018) ("*NARUC Comments*").

[14] *See supra notes* 5-7 and accompanying text; *see also CaptionCall Comments* Part III.A.

[15] *Sorenson*, 755 F.3d at 710. Missouri Assistive Technology ("MoAT") offers a few anecdotal examples of IP CTS being "pushed" by providers, *MoAT Comments* at 5, when, in the view of staff, amplification was what the customers really "need[ed]," *id.* at 2; *see also id.* at 3-4. But these anecdotes are not evidence of fraud, nor are they sufficient to determine if the consumer in fact was eligible for IP CTS under the ADA, which mandates that "functionally equivalent" telephone communications be "available" to individuals with hearing loss. Significantly, a user may require captions to comprehend fully the intended meaning for some calls, or some portions of calls, due to the voice characteristics of the other party, the specific call content, the background noise conditions, or the equipment being used. *See CaptionCall Comments* at 36, 58. Several of the MoAT examples also demonstrate that the provider's IP CTS referral either likely *was* appropriate (for example, because IP CTS is still being "actively" considered) or affirmatively did not result in waste (because the individual independently decided to use another technology). Insofar as MoAT's concern is based on its belief that many "individuals are unaware that [IP CTS] calls go through Relay [and] that there is a cost for captions," *MoAT Comments* at 2, CaptionCall disagrees with the premise, especially given the disclosures already mandated by the Commission. But, if true, this issue should be addressed—and CaptionCall

II. There Is Broad Agreement in the Record That a Third-Party Certification Framework Would Address Any Concerns About Consumer Eligibility.

CaptionCall agrees with the Consumer Groups that individuals with hearing loss are best positioned to understand their need for captions. Moreover, provisions that permit self-certification benefit consumers with disabilities by eliminating the burden associated with obtaining third-party certifications.[16] As the Consumer Groups explain, "[s]elf-certification remains the ideal method to identify users," because it "enables consumers to become eligible and receive access to IP CTS in a reasonably short period of time, as the ADA requires."[17] "[I]ncreased eligibility requirements are particularly problematic for people who traditionally have required IP CTS, many of whom are elderly or have mobility disabilities," that make it difficult even to consult an HHP.[18] And, in addition to benefiting consumers, self-certification is also "fiscally prudent" for the TRS Fund.[19]

If the Commission nonetheless believes additional checks are necessary, there is overwhelming support for requiring a third-party certification, signed by an HHP, under penalty of perjury, and including specific attestations by the HHP about the new user, which would be a meaningful and sufficient check to ensure that only eligible users receive IP CTS. And conversely, the record does not support the view that more restrictive proposals are necessary to ensure that only eligible consumers receive the service.

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supports a requirement that service may not be provided to a new user unless the certifying HHP attests to instructing the new user on these aspects of the program. *See CaptionCall Comments* at 26-27.

[16] *See Consumer Groups Comments* at 11-12.

[17] *Id.* at 11.

[18] *Id.* at 12.

[19] *Id.* at 11.

First, commenters overwhelmingly agree that HHPs already evaluate individuals with hearing loss using a battery of tests, ensuring that only individuals who need IP CTS are certified for it. The American Academy of Audiology ("AAA") explains that when working with persons with hearing loss, "it is common practice for audiologists to gather information" about the internal and external factors affecting the individual's hearing "directly (e.g., through medical history, communications needs and hearing assessments) and indirectly (e.g., through prior knowledge, observation, [and] patient interview). All of this evidence is evaluated comprehensively when an audiologist recommends the use of any treatment option."[20] The IHS confirms this point for hearing instrument specialists as well:

> [A] hearing care professional's decision to certify a patient or client to use a captioned telephone is typically based upon his/her findings from several tests conducted as part of a comprehensive evaluation and audiometric evaluation, which includes reviewing a patient's medical history; a visual inspection of the patient's ears using otoscopy; a hearing test, which evaluates their hearing ability using pure-tone air conduction, bone conduction, and speech testing. . . . Additional tests . . . may also be performed. The combined test results enable hearing care professionals to understand the individual's unique hearing ability and limitations, and make a recommendation for hearing technology.[21]

Critically, while professionals perform such tests before making a recommendation, they retain the "flexibility to use [their] clinical judgment for clients/patients with unique communicative and/or cognitive abilities and challenges who may not meet the thresholds that typically define IPCTS need but require IPCTS to effectively communicate using the telephone."[22]

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[20] *See* Comments of American Academy of Audiology, CG Docket Nos. 13-24, 03-123, at 3 (Sept. 7, 2018) ("*AAA Comments*").

[21] *IHS Comments* at 2.

[22] *Id.* There is no evidence that the Commission's proposed requirement that HHPs conduct "functional assessments" or objective evaluations of individual users is necessary. *See Further Notice* ¶ 132. But if the Commission chooses to pursue this approach (which it should not), it should not adopt any protocol that does not leverage HHPs' current tools and practices. Moreover, any protocol would need to be subjected to a rigorous testing period before being

Second, the record makes clear that many of the practices about which the Commission expressed concern in the *Further Notice* are already unlawful or otherwise professionally prohibited.[23] As the IHS describes, hearing instrument specialists are "regulated by their respective states, which generally require adherence to a national code of ethics and establish a list of prohibited acts, which includes, but is not limited to committing acts of unprofessional conduct, behaving immorally, or committing fraud or deceit in the provision of care."[24] Moreover, "state licensing agencies and boards do and will restrict or revoke" licenses upon cause.[25] ASHA agrees that any improper practices between providers and certifying professionals for the certification of individuals who do not need IP CTS "would be a violation of several provisions of ASHA's Code of Ethics."[26] ASHA also emphasizes that "[t]here are no mechanisms in place to incentivize audiologists or other certifying providers to recommend IP CTS devices or services to their clients who do not need them or who would not benefit from them. Audiologists do not receive payment [or] . . . financial compensation for recommending the devices or certifying eligibility."[27] Indeed, the Commission's existing rules already preclude such payments.

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adopted. Adoption without such testing could deprive individuals who need IP CTS access to the service, in contravention of the ADA.

[23] Specifically, in the *Further Notice*, the Commission expressed concerns about (1) provider-HHP marketing practices; (2) relationships or arrangements between providers and HHPs that render HHPs' evaluations of individuals nonobjective; and (3) HHP practices that unduly exert pressure on individuals to use IP CTS. *See Further Notice* ¶¶ 118, 129-134.

[24] *IHS Comments* at 2.

[25] *Id.*; *see also AAA Comments* at 5 (offering to "fully explain the role of the audiologist in the IP CTS certification process, as well as the professional and ethical obligations that are required by state licensure and a code of ethics prescribed by membership in a national organization").

[26] *See ASHA Comments* at 2. Indeed, even MoAT, which assumes that there is waste, fraud, and abuse in the IP CTS program, argues that attestations are unnecessary, because HHPs are "licensed" professionals and are "required to follow" professional codes and thus "should not have to make an attestation to the hearing loss of an individual for IPCT[S]." *MoAT Comments* at 9.

[27] *See ASHA Comments* at 2.

Third, concerns about third-party certifications are vague and lack evidence—and thus cannot justify the adoption of stricter eligibility rules. For example, ClearCaptions implies that there may be problematic relationships between IP CTS providers and HHPs, creating incentives for HHPs to offer only one provider's equipment/service.[28] But ClearCaptions does not cite or describe any specific examples of such improper relationships. That lack of concrete evidence is not surprising: Any such relationship is already prohibited by the Commission's rules,[29] as well as professional codes of conduct.[30] To the extent that individual providers or HHPs are violating such prohibitions, the appropriate course is for the Commission (or state licensing entities) to pursue enforcement action accordingly—not to adopt an overbroad prohibition on HHP involvement in user-eligibility determinations.[31] Additionally, the Florida Deaf Service Center Association asserts that professional HHPs—licensed medical professionals—somehow lack "the expertise in the technology" and "knowledge of the availability of more appropriate technology" to screen users.[32] CaptionCall respectfully disagrees with both characterizations, which are disputed by the comments of AAA, IHS, and ASHA, discussed above.[33] On this record, the Commission cannot justify further restrictions on user eligibility.[34]

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[28] Initial Comments of ClearCaptions, LLC, CG Docket Nos. 13-24, 03-123, at 36 (Sept. 17, 2018) ("*ClearCaptions Comments*").

[29] 47 C.F.R. § 64.604(c)(8)(ii).

[30] *See CaptionCall Comments* at 31-32.

[31] CaptionCall further notes that it already requires certifying HHPs to attest to not having a relationship with any employee at CaptionCall or its subsidiary, and it is not opposed to the Commission's requiring this attestation in all third-party certifications. *See id.* at 24, 32-33.

[32] *Florida Deaf Service Center Association Comments* at 1.

[33] *See supra* notes 20 to 22 and accompanying text.

[34] General claims that HHPs are not doing an adequate job, *see, e.g.*, sources cited *supra* note 13, are insufficient to justify additional eligibility rules. The Administrative Procedure Act (the "APA") requires the Commission to base

Finally, many commenters generally support the Commission's proposal to ensure that certifications are performed by qualified professionals, but, like CaptionCall, agree that the Commission's proposed list of such professionals in the *Further Notice* is under-inclusive. Sprint, for example, urges the Commission to include Veterans Service Officers.[35] Hamilton agrees, and also notes that general practitioners, registered nurses, and physician assistants should be included, so long as they are qualified to evaluate hearing loss in accordance with professional standards.[36] The Consumer Groups also urge the Commission, at minimum, to include general practitioners, because "[f]or many seniors with hearing loss, their primary care physician is the medical professional they are most likely to see, and a need to seek a referral to a hearing specialist would impose an additional burden."[37] CaptionCall agrees, and urges the Commission to consider these and other professionals that were permitted to certify users under the Commission's 2013 interim rules and are permitted to certify in the National Deaf-Blind Equipment Distribution Program.[38]

III. The Record Supports the Position That State Devolution Could Create Legal, Financial, and Procedural Problems for States, Reduce Choice for Consumers, and Increase Pressure on the Fund.

State equipment distribution programs ("EDPs") and relay programs are important partners for ensuring that the growing population of individuals with hearing loss have access to the

any such rules on specific evidence of waste, fraud, or abuse. *See Sorenson*, 755 F.3d at 708 ("[T]he wisdom of agency action is rarely so self-evident that no other explanation is required.").

35 *Sprint Comments* at 24.

36 *Hamilton Comments* at 20.

37 *Consumer Groups Comments* at 13-14.

38 *CaptionCall Comments* at 25; *see also In re Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 31 FCC Rcd 9178, 9202-04 ¶¶ 58-63 (2016); *In re Misuse of Internet Protocol (IP) Captioned Telephone Service*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13,420, 13,432 ¶ 24 (2013), *vacated in part by Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702 (D.C. Cir. 2014).

equipment and services they need to communicate via telephone. Individuals should continue to be able to visit state programs if they want to do so. At the same time, however, commenters, including many state programs, have identified myriad legal, financial, and administrative problems with mandatory devolution of the IP CTS program to the states. Moreover, if the program were devolved to the states, several states indicate that they might adopt different user eligibility criteria and follow different procedures in administering the program.[39] The ADA is a *federal* civil rights law that vests individuals with hearing loss with the federal right to functionally equivalent telephone communications; indeed, it was enacted in part to address gaps in state relay programs that left individuals with differentiated access based purely on the jurisdiction in which they happened to live.[40] In short, the record does not support any mandatory devolution.

Several commenters agree that it is not clear that states have jurisdiction over IP CTS, which, under federal law, is an inherently interstate information service and thus not subject to state regulation. The Pennsylvania PUC, for example, explains that it would be legally inconsistent to treat "IP CTS as a telecommunications service subject to . . . administration [by] the states" while treating "the underlying technology (Internet Protocol) and services (IP CTS and BIAS)" as

[39] *Compare* Comments of Arizona Commission for the Deaf and the Hard of Hearing, CG Docket Nos. 13-24, 03-123, at 3 (Sept. 13, 2018) ("*Arizona Comments*") (encouraging the Commission to adopt "clear, concise and uniform standards with regard to user eligibility" and cautioning that "[t]his is not something that should be left to the individual States" because "[c]onsumers utilizing IP CTS . . . deserve that such services be seamless across the Country"), *with* Comments of California Public Utilities Commission, CG Docket Nos. 13-24, 03-123, at 11 (Sept. 17, 2018) ("*California Comments*") ("The CPUC urges the FCC to allow states to establish their own eligibility criteria to determine which equipment and services provide the user the best access to telecommunications services.").

[40] *See* H.R. Rep. No. 101-485(IV), at 27-28 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 512, 516-17 (because "most states ha[d] not progressed as rapidly in the deployment of [telecommunications devices for the deaf] as some others" and because interstate systems of such devices were "virtually nonexistent" it was necessary for Congress "to establish a seamless interstate and intrastate relay system for the use of [such devices] that will allow a communications-impaired caller to communicate with anyone who has a telephone, anywhere in the country").

"information service[s]."[41] But even assuming that there were no obstacle to devolution under *federal* law (which there is), many states also identify *state* law problems that preclude administration of IP CTS. The California PUC, for example, notes that state law limits its jurisdiction "over IP-enabled . . . services" which is "partly" the reason that California "does not yet have a program for IP relay service [or] IP [CTS]."[42] The Nebraska Public Service Commission, like the California PUC, notes that state law unequivocally prohibits its administration of the IP CTS program.[43] The Illinois Telecommunications Access Corporation notes that the only way to avoid the need for state legal changes that might result in significant delays (possibly years) would be to allow each state to use its existing application process to certify new users.[44] And the Pennsylvania PUC notes that its authority over IP CTS likely would be limited to collecting and remitting funds to the TRS Administrator, not taking on greater oversight or administrative duties.[45]

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[41] Comments of Pennsylvania Public Utility Commission, CG Docket Nos. 13-24, 03-123, at 17 (Sept. 17, 2018) ("*Pennsylvania Comments*"); *id.* at 18 (describing suggestion "that Section 225 authorizes the classification of some IP CTS calls as jurisdictionally intrastate" as "problematic" under the *RIF Order*; noting states thus may lack "authority to regulate VoIP services, which include IP CTS"; and arguing that classification questions must be resolved before states could assume authority to administer IP CTS responsibilities); *see also CaptionCall Comments* Part IV.C.1 (citing, among other authorities, *In re Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 431 ¶¶ 201-202 (2018); *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018)). While NARUC disagrees that interconnected VoIP IP CTS calls are inherently interstate, it agrees that Commission precedent regarding IP-based communications is "problematic" and "has implications" for whether the proposed devolution would be lawful. *See NARUC Comments* at 15, 17.

[42] *California Comments* at 3.

[43] Comments of Nebraska Public Utility Commission, CG Docket Nos. 13-24, 03-123 at 2-3 (Sept. 14, 2018) ("*Nebraska Comments*").

[44] Comments of Illinois Telecommunications Access Corp., CG Docket Nos. 13-24, 03-123, at 7 (Sept. 14, 2018) ("*Illinois Comments*").

[45] *See Pennsylvania Comments* at 13-14.

Devolution of IP CTS could also reduce competition and increase costs.[46] Several states express concerns that if they were to administer the program, they should not be required to contract with multiple providers.[47] A mandated state devolution therefore could reduce consumer choice. State commenters also raise concerns that devolution could be an unfunded mandate and request reimbursements for any costs associated with administration of the program from the TRS Fund.[48] Permitting such reimbursement would be contrary to the goal of reducing pressure on the TRS Fund.[49]

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[46] *See In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5157 ¶ 36 (2000) ("[G]iving consumers a choice . . . might well improve the quality of TRS service in different states.").

[47] *See, e.g.*, Comments of the Kansas Corporation Commission Regarding the IP CTS Portion of the TRS Program, CG Docket Nos. 13-24, 03-123, at 8 (Sept. 11, 2018) (noting that Kansas "does not support the states being required to offer consumers a choice of providers," given that it currently contracts for intrastate TRS through a "single supplier," and that "[h]aving multiple providers for IP CTS and a single provider for all other TRS" would be "unnecessarily complex to administer"); Comment by The State of New Mexico Commission for Deaf and Hard of Hearing Persons, CG Docket Nos. 13-24, 03-123, at 5 (Sept. 17, 2018) ("*New Mexico Comments*") (describing that if the state were required to enter into contracts with multiple providers it would "require the administrative agency to encumber an unknown/inadequately justified amount of funding, absorb increased administrative expenses due to multiple contracts and points of contact, and potentially have in-state competition between their contractors for consumers while using state/federal funds"); *California Comments* at 9 (noting that California may lack authority to certify *any* provider of IP-based service, given jurisdictional limitations, unless certification is assumed through contracting).

[48] *See, e.g.*, *California Comments* at 4 ("Specifically, California urges the FCC to ensure that any shift of responsibility for IP CTS includes funding that is made available for both the administration of the program and for the intrastate calls."); *Illinois Comments* at 2 (expressing "strong[]" belief that the Commission should "reimburs[e] state TEDPs for their role in assessing user qualifications for IP CTS"); *MoAT Comments* at 7 (requesting compensation for demonstration of IP CTS assessments); *New Mexico Comments* at 6 (expressing willingness to "explore" transfer of IP CTS responsibility if funding is "[e]nsured . . . for states"); *Pennsylvania Comments* at 4-5 ("Finally the Commission must address the means whereby states secure the resources to implement any . . . administrative function envisioned by the Commission. This is needed to avoid imposition of an undesired or unfunded federal mandate on state commissions that may already be facing considerable resource constraints.").

[49] *Cf. Sprint Comments* at 23 (describing that HHP assessments are conducted "at no cost to the Fund"); *accord CaptionCall Comments* at 40-41. Relatedly, many state commenters note that it would be premature to take *any* definitive position on *any aspect* of devolution until state-specific data are made available. *See, e.g.*, *Arizona Comments* at 3 ("ACDHH cannot assess the resources, funding and other logistical issues associated with assuming the administration of . . . IP CTS . . . for the State of Arizona."); *California Comments* at 1-2 ("The CPUC still cannot support transferring the program to the states unless the FCC provides detailed information regarding potential state impacts . . . ."); *Illinois Comments* at 6-10 (raising a variety of questions that must be answered before states could undertake assessments of all IP CTS users); *Nebraska Comments* at 4 ("Until [new and state-specific] data is released, Nebraska and other states will not be in a position to comment on many of the changes proposed to the IP CTS model."); *Pennsylvania Comments* at 3, 19 (noting that Pennsylvania's "reluctance" to, among other things "take a

In sum, the record confirms that mandated devolution of any aspect of the IP CTS program to the states would be contrary to federal and state law; could reduce competition; and could increase costs to the TRS Fund.[50]

IV. Commenters Agree That IP CTS Rates Should Mimic Market-Based Incentives for Providers to Invest in Innovation and Efficiency.

Many commenters agree that the Commission should approximate market-based incentives when it sets IP CTS rates. Like CaptionCall, Hamilton supports a price cap as the best methodology, whereas Sprint supports continued use of the MARS methodology as its primary proposal, highlighting several benefits that also could be obtained through price cap regulation. Several commenters also underscore the fact that a submitted-cost approach to rate setting would be harmful and inefficient. Beyond these fundamental design questions, commenters generally support the view that rates for IP CTS should be uniform, irrespective of providers' intellectual property costs, size and scale, or underlying technology.

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more active role in the administration of IP CTS" is "due to a lack of important information and details that are materially relevant" to the issue). CaptionCall does not believe it is necessary for the Commission to make these data available, because the record strongly suggests that the Commission should not pursue devolution. But these state commenters have raised legitimate concerns that would make devolution problematic under the APA.

[50] While CaptionCall supports efforts to ensure that the TRS Fund remains sustainable, that goal cannot lawfully be pursued through an IP CTS budget cap, as proposed by ITTA. *See* Comments of ITTA – The Voice of America's Broadband Providers, CG Docket Nos. 13-24, 03-123, at 20-21 (Sept. 17, 2018) ("*ITTA Comments*"). A cap may require IP CTS providers to limit or deny service, which would contravene the ADA by depriving consumers with hearing loss access to "functionally equivalent" telephone communications. The legislative history also confirms that a "cap" on the TRS fund is unlawful. *See* Comments of Sorenson Communications, LLC Regarding Part III and Section IV.C-E and G-H of the Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 & 03-123, Ex. A, (May 30, 2017) (Samuel R. Bagenstos, The Proper Interpretation of "In the Most Efficient Manner" in Title IV of the Americans with Disabilities Act 22-24 (2017). The fact that the Commission caps universal service programs is irrelevant: Section 254 and Section 225 have different structures, histories, and contexts, which explain why the former permits caps, but the latter does not. Section 254 empowers the Commission to consider such "principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest." 47 U.S.C. § 254(b)(7). In contrast, Section 225 is not a classic public-interest delegation; it is a civil rights protection that has a "primary objective" of making functional equivalence "available." *Cf. Sorenson Commc'ns, LLC v. FCC*, 897 F.3d 214, 227-28 (D.C. Cir. 2018).

A. The Record Confirms That Setting IP CTS Rates to Mimic Market Incentives Would Have Numerous Benefits over Submitted-Cost-Based Rates.

Hamilton, like CaptionCall, proposes that the Commission set IP CTS rates under a price cap methodology. Although Hamilton's proposal is slightly different from the price cap proposed by CaptionCall, the two share the same goal and reach a similar outcome.[51] Specifically, Hamilton notes, the Commission "must ensure that any . . . rate methodology adopted on a permanent basis sufficiently compensates IP CTS providers such that the market remains competitive and that service quality is assured."[52] And "[a] price cap approach, set at a fair starting rate, would be far more likely to encourage a competitive IP CTS market . . . ."[53] That is because, as Hamilton describes, "an appropriate price cap rate could preserve some of the desirable incentives embodied by a market based rate," including creating incentives for "providers to seek out and implement cost savings measures," and establishing "predictability" which "diminishes idiosyncratic risk" and "reduces the cost of doing business."[54]

Hamilton proposes the initial rate should be set at $1.76 per minute,[55] which is similar to CaptionCall's proposal of $1.75. Hamilton then explains that the Commission should consider the risks associated with underestimating or overestimating the appropriate X-Factor for a price cap—

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[51] *See CaptionCall Comments* at 60 (proposing a price cap, with rates initialized at $1.75 per minute, for a three-to-five-year period, with the X-Factor set equal to the change in GDP-PI (*i.e.*, offsetting inflation), with rates to be reset through reverse auction or adjustment of the X-Factor at the end of the price cap term).

[52] *Hamilton Comments* at 2.

[53] *Id.*

[54] *Id.* at 4.

[55] *Id.* CaptionCall believes this rate will create the right incentives for higher-cost providers to achieve cost savings, without resulting in market disruptions or forced exit of multiple providers. This rate also finds support from correcting Rolka Loube's calculation of average costs by including improperly excluded cost categories. *CaptionCall Comments* at 64-66. Hamilton additionally notes that this rate would match the rate set by the MARS methodology for the 2011-12 funding year, which no party challenged as unreasonable, even though doing so would not fully account for inflation. *Hamilton Comments* at 4.

including the risk that "the X-factor could cause a rate to fall quicker than costs, thus eliminating returns and pushing providers from the market."[56] Hamilton also notes that the primary cost to TRS providers is labor, which weighs in favor of (1) a labor-based inflation adjustment, (2) an efficiency factor based on telecommunications call centers rather than the industry as a whole, and (3) a zero or negative productivity factor, as there are diminishing marginal efficiency improvements for communications assistants ("CAs").[57]

As Professor Michelle Connolly points out, the Commission has a long history of utilizing price cap regulation for regulated markets, having moved away from submitted-cost-based rate setting nearly 30 years ago.[58] And in the years that followed, many state regulators likewise transitioned from submitted-cost rate setting to price cap regulation.[59] Professor Connolly explains that the subsequent history confirms that price caps offer numerous benefits over submitted-cost rate setting, including creating more certainty (which reduces business risk and supports investment in innovation and efficiency), setting better incentives for providers to make such investments, avoiding certain administrative costs, and mitigating the risk of regulator error.[60] The record confirms that many of these benefits would be realized by adopting a price cap approach for IP CTS.

Sprint similarly emphasizes the importance of setting stable, predictable rates for the service. While not proposing a price cap, Sprint urges the Commission to continue to use a market-

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[56] *Hamilton Comments* at 5.

[57] *Id.* Although CaptionCall proposed an alternative X-Factor—*i.e.*, setting it equal to the change in GDP-PI—Hamilton's proposal is a possibility that the Commission should also explore.

[58] *CaptionCall* Comments, App. C ("Connolly Decl.") ¶ 40.

[59] *Id.* ¶ 43.

[60] *Id.* ¶¶ 11-20, 65-74.

based approach and retain the MARS methodology to set predictable rates, which are conducive to investment and innovation.[61] CaptionCall agrees that promoting stability and certainty is an important feature of any rate-setting methodology, because they are necessary conditions for making investments that redound to the benefit of consumers. But a price cap also would create these conditions, while encouraging providers to achieve year-over-year cost savings.[62]

Several commenters also agree with CaptionCall that abandoning a market-based rate-setting methodology in favor of a submitted-cost rate-setting methodology would introduce inefficiencies and other harms. Hamilton, for example, notes that reliance on submitted costs would be detrimental, focusing on the fact that providers would lose any incentive to invest in efficiencies or other cost-saving innovations.[63] And Sprint states that the MARS approach has eliminated the administrative costs associated with setting rates based on submitted-cost data.[64] The Commission previously has recognized as much: When it adopted the MARS rate methodology, the Commission touted that doing so would "eliminate[] the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data" on costs[65]—a prediction, notably, that has been borne out (notwithstanding the fact that the Fund Administrator continues to request cost data from providers). The record here underscores the inefficiency of a

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[61] *Sprint Comments* at 9.

[62] *Hamilton Comments* at 4 ("Price cap rates can also introduce more predictability over a longer period of time than cost-based methodologies. This predictability diminishes idiosyncratic risk, which can reduce the cost of doing business.").

[63] *Id.* at 11-12; *accord CaptionCall Comments* at 63-64.

[64] *See Sprint Comments* at 9; *accord CaptionCall Comments* at 63 (describing that setting rates based on submitted costs involves a recurring, drawn-out process that invites arbitrary line drawing around reasonable and allowable cost categories).

[65] *In re Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20,140, 20,150 ¶ 17 (2007).

submitted-cost based approach, which inevitably invites recurring disputes over what categories of costs are "reasonable" and "allowable." For example, ITTA argues that provider-specific marketing and outreach costs should not be compensable in a submitted-cost rate-setting model.[66] Even apart from the merits of this proposal, it would be a waste of resources for parties to confront this question every year (or every few years) as would necessarily be the case if the Commission were to move to a submitted-cost rate-setting methodology.[67] A price cap approach avoids these harms by avoiding the need for rates to be revised annually based on submitted costs.

Moreover, the record makes clear that adopting a submitted-cost rate-setting methodology would entail a significant risk of regulator error, given the flawed recommendations of the TRS Fund Administrator to exclude certain costs that are necessary to provide service.[68] Hamilton, for example, explains that the Fund Administrator does not consider certain costs that are included in the Commission's Part 32 rules, including non-IP CTS costs, indirect overhead costs, research and development beyond what is required to meet non-waived mandatory minimum standards, relay hardware and software used by the consumer (including installation, maintenance, and testing), and income taxes.[69] Sprint similarly echoes that any cost-based methodology must ensure that there is compensation for employee training, quality assurance, and customer service; research and development and intellectual property, including licensee fees and technology platform updates;

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66 *See ITTA Comments* at 15-16.

67 ITTA's proposed exclusion could harm individuals with hearing loss. As the Consumer Groups previously has pointed out, it was provider-specific marketing and outreach that "[f]inally" resulted in "people with hearing loss . . . getting access to the phones they need." Comments of Hearing Loss Association of America, CG Docket Nos. 13-24, 03-123, at 2 (Feb. 26, 2013).

68 *See Hamilton Comments* at 13 (urging the Commission to avoid repeating the mistakes "of the rate cuts set forth in the *Report and Order*, which were based on flawed cost data from the TRS Fund Administrator that failed to account for all legitimate costs of providing the service"); *Sprint Comments* at 18-19 (noting that TRS Fund Administrator's allowed costs do not accurately reflect the costs of providing service); *accord CaptionCall Comments* at 63-64.

69 *Hamilton Comments* at 13.

costs of providing equipment to users at no charge; and equipment installation.[70] The Administrator's recommendation to exclude these categories from the calculation of average costs—when they must be incurred to provide service and indeed are incurred by virtually every provider—and claim that providers are making unreasonable margins based on the comparison of revenue to that artificially low average illustrate how submitted-cost rate setting can harm competition, providers, and end users.[71]

B. The Record Supports Treating IP CTS Providers Uniformly When Setting Rates.

To set the proper incentives for providers—and to avoid introducing arbitrary distinctions into IP CTS rates—there is support in the record for treating all providers uniformly. Specifically, the record supports the conclusion that the Commission should treat all providers' intellectual property costs uniformly and should not adopt either tiered rates or the Fund Administrator's proposed ASR-only rate (which is effectively a technology-specific tier).

First, if the Commission sets rates based on submitted costs (or even initializes a price cap based on providers' submitted costs) it must treat providers' costs uniformly. There is no legitimate basis for treating CaptionCall's intellectual property costs differently from other providers' on the theory that the license fee is paid to an affiliate holder of intellectual property, as

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[70] *Sprint Comments* at 18-19.

[71] *See, e.g.*, *In re Business Data Services In an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3517-18 ¶ 127 (2017) (noting the inherent risk that regulation will provide insufficient revenue to market participants), *review granted in part, decision vacated in part by Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018); *In re Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 2890 ¶ 31 (1989) ("[A]dministering rate of return regulation . . . is a difficult and complex process . . . . [S]uch regulation is built on the premise that a regulator can determine accurately what costs are necessary to deliver service. In practice, however, a regulator may have difficulty obtaining accurate cost information . . . . Furthermore, no regulator has the resources to review in detail the thousands of individual business judgments a [regulated company] makes before it decides, for example, to install a new [technical] system.").

compared with an unaffiliated rights holder. Hamilton agrees that excluding such costs when establishing provider averages for rate-setting purposes would be "improper."[72] The record thus clearly supports the conclusion that providers' intellectual property costs should be treated uniformly if they are used to set rates.[73]

Second, the Commission should also treat IP CTS providers uniformly, irrespective of their size or scale. As CaptionCall explained in its comments, based on the research of Dr. Connolly, adopting tiered rates in the market for IP CTS—which has none of the features that weighed in favor of tiering rates for VRS—would be unnecessary and inherently economically inefficient, and would, by definition, skew the market.[74] Moreover, as Dr. Connolly points out, Rolka Loube's data show that economies of scale generally have been exhausted by the largest IP CTS providers.[75]

While two commenters offer arguments in favor of a tiered rates structure for IP CTS,[76] they do not address whether the IP CTS market shares any of the features that the Commission

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[72] *Hamilton Comments* at 8.

[73] ClearCaptions similarly explains that the Commission's proposed approach—allowing recovery of third-party licensing fees while disallowing internal R&D costs—would effectively lock in the status quo and deter endogenous investment in innovation. *ClearCaptions Comments* at 7; *accord CaptionCall* Comments at 89-90 (noting that internal investment in development of intellectual property advances the Commission's goals for TRS and promotes competition). While ClearCaptions implies there is something improper about affiliate-party transactions, where a provider licenses IP from its own affiliate, ClearCaptions does not identify a reason why allowing the recovery of R&D costs is preferable to allowing recovery of affiliate-transaction costs when supported by approved accounting methodologies. And while ITTA urges the Commission to "cap" recovery of intellectual property licensing fees, its analysis is limited to arguing that such fees must be "reasonable." *ITTA Comments* at 15-16. Based on the analysis prepared by Deloitte, the license agreement between CaptionCall and Sorenson IP Holdings satisfies this standard.

[74] *See CaptionCall Comments* Part VI.E.1.a; Connolly Decl. ¶¶ 46-49.

[75] *See* Connolly Decl. App. A.

[76] Sprint does not endorse adoption of tiered rates for IP CTS as its primary proposal. Instead, it argues that if the Commission does not retain the MARS rate, it should "consider" adopting tiered rates, as preferable to setting compensation equal to the costs of the lowest-cost or second-lowest-cost provider, or relying on use of weighted averages. *Sprint Comments* at 16-17. ClearCaptions advocates for tiered rates but is not itself an emergent provider. *See* Connolly Decl. App. A.

relied on for adopting tiered rates for VRS. In fact, it does not. In the IP CTS market, there are multiple competitive providers with substantial market shares.[77] Additionally, in the IP CTS market, existing economic evidence shows that cost differences between all or nearly all providers are not primarily driven by economies of scale.[78] Hence, volume is not an appropriate proxy for reasonably efficient costs, and differentiated rates thus cannot support efficient operation.[79] IP CTS also does not have the same interoperability issues that were present in the VRS market,[80] nor are there network effects—and switching costs are low.[81] Moreover, the market continues to be under served. Thus, new entrants can easily capture market share if they offer a service that is competitive in terms of quality.[82] And indeed, the history of IP CTS confirms that tiers are unnecessary. Over the past several years, several new entrants have entered the market—including CaptionCall, which was able to enter the market and grow without tiered rates. There is no reason the next generation of IP CTS providers cannot do what CaptionCall and others have done—and what start-ups do in most industries every day.[83] Thus tiered rates, which essentially reward inefficiency, would compound the harmful incentives, discussed above, that would arise from moving to submitted-cost-based rates for IP CTS—even if the tiers were based on volume.

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[77] *See CaptionCall Comments* at 79.

[78] *See* Connolly Decl. ¶ 19 n.8; *see also id.*, App. A (analyzing IP CTS market and concluding that there is a wide distribution of provider costs and market shares that are likely the result of many factors, not just economies of scale and that while economies of scale are apparent in the market, a majority of providers likely already have exhausted their scale economies).

[79] *See CaptionCall Comments* at 80.

[80] Unlike VRS calls and associated direct video service, most IP CTS calls do not involve two IP CTS users. IP CTS users purchase voice service from third parties, and the caller is not dependent upon the other party's IP CTS provider or underlying voice service provider.

[81] *See CaptionCall Comments* at 80.

[82] *See id.*

[83] *See id.* at 81.

Finally, the Commission also should treat IP CTS providers uniformly, without regard to what technology they use to deliver service (*i.e.*, CA-assisted service, service that relies exclusively on ASR technology, or a hybrid of the two). As a threshold matter, this means the Commission should reject ITTA's proposal that the Commission initially adopt separate rates for CA-based and ASR-exclusive IP CTS. ITTA argues that separate rates are appropriate because "the Commission should incent providers to implement ASR."[84] However, ITTA does not propose a specific ASR rate or offer a methodology for calculating one.[85] And although CaptionCall agrees that the Commission should encourage providers to implement ASR, ITTA's proposal is the wrong way to do so. Instead, the optimal rate scheme would compensate all IP CTS providers at a single price-capped rate of $1.75.[86] This approach would motivate providers to begin using ASR, promote long-term efficiency, assure that the IP CTS program remains administrable, and allow providers to innovate and compete.[87]

Even if the Commission were to adopt separate rates for ASR-exclusive services (and it should not), there is near unanimity on the record opposing the Fund Administrator's proposed ASR-only rate of $0.49 per minute. Commenters agree that the Fund Administrator's calculation suffers from evidentiary and methodological problems that improperly depressed the recommended rate, which is separately problematic because it does not provide the proper incentives for at-scale providers to develop and use ASR. For example, Hamilton argues that the Fund Administrator's rate is flawed because it improperly excludes costs that providers presently

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84 *ITTA Comments* at 18; *accord id.* at 19 ("The Commission should hasten [the] arrival of the ASR future via establishing an ASR compensation scheme that incents IP CTS providers to migrate to use of the technology.").

85 *See id.* at 18-20.

86 *See CaptionCall Comments* Part VI.E.1.b.

87 *See id.*

incur and would continue to incur following a transition to ASR, such as costs related to intellectual property,[88] as well as "software, customer distributed equipment, and other expenses."[89] Hamilton also emphasizes that the Fund Administrator's recommended rate is flawed because it does not reflect what could be significant incremental costs of obtaining, developing, and implementing ASR.[90] Similarly, ClearCaptions observes that the Fund Administrator's rate is not dependable because, among other reasons, no provider "can accurately estimate the future costs of IP CTS using ASR."[91] Even ITTA—which supports separate rates for CA-assisted and ASR-exclusive services—nowhere claims that the Fund Administrator's recommended ASR rate is dependable. In short, the record does not support either the general proposition that there should be an ASR-only rate or the Administrator's specific recommendation that the ASR-only rate should be $0.49 per minute.

CONCLUSION

The *Further Notice* requested comment on a variety of reforms to the IP CTS program, ranging from targeted measures to drastic overhauls. The record makes clear that drastic overhaul is unnecessary and that the Commission instead should focus on certain specific and targeted measures to modernize the IP CTS program. As an initial matter, numerous parties agreed that the increased demand for IP CTS is due to demographic changes and the desirable trend of people getting the services they need to communicate by phone. Moreover, with the record refreshed, it is even clearer that there is no persuasive or specific evidence of waste, fraud, and abuse in the

88 *See Hamilton Comments* at 10; *see also CaptionCall Comments* at 86 n.299.

89 *See Hamilton Comments* at 8-9; *see also CaptionCall Comments* at 86-87.

90 *See Hamilton Comments* at 9; *see also CaptionCall Comments* at 85-86; *accord CaptionCall Comments* at 82-87.

91 *See ClearCaptions Comments* at 22; *see also CaptionCall Comments* at 85 (noting that no company currently offers ASR-exclusive service and that the only two companies to apply for certification to do so have not provided actual or estimated cost data).

program. There is also wide agreement that if the Commission adopts a third-party certification framework, this will build on the existing regulations, state laws, and professional codes that already bind licensed HHPs and will prevent waste, fraud, or abuse from entering the program. The record also indicates that states should continue to be trusted partners in the provision of IP CTS, but the Commission should not mandate devolution of administration of the program to the states. And finally, with respect to rates, many commenters agreed that the Commission should attempt to replicate market-based incentives, and in no event should the Commission set rates based on providers' submitted costs, or adopt non-uniform rates.

Respectfully submitted,

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